

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

Spanish Fort Post Office
Spanish Fort, AL 36527

Docket No. A2021-1

UNITED STATES POSTAL SERVICE MOTION TO DISMISS PROCEEDINGS
(January 7, 2021)

Pursuant to 39 CFR § 3010.160 and Order No. 5793,¹ the United States Postal Service (Postal Service or USPS) moves to dismiss the City of Spanish Fort's appeal of the Postal Service's determination to close the Spanish Fort Community Post Office (Spanish Fort CPO) because, by operation of law, the Postal Regulatory Commission (Commission or PRC) lacks jurisdiction to hear this appeal.

On December 28, 2020, the City of Spanish Fort, Alabama (Petitioner) through David J. Connor, City Attorney, appealed the Postal Service's determination to close the Spanish Fort CPO, a type of contractor-operated retail facility, located in Spanish Fort, Alabama.² The Petitioner requests that "[p]ursuant to 39 U.S.C. § 404(d)(5)," the Commission review the Postal Service's decision to close the Spanish Fort CPO.³ The Petitioner thereby

¹ PRC Order No. 5793, Notice and Order Accepting Appeal and Establishing Procedural Schedule, PRC Docket No. A2021-1 (December 29, 2020).

² Handbook PO-101 refers to these types of facilities as contractor-operated retail facilities. See Handbook PO-101, Appendix A – Glossary of Terms; Postal Service Publication 156, Guide to Contract Postal Units for Postal Service Employees, January 2014; United States Postal Service, Contract Postal Units, <https://about.usps.com/suppliers/becoming/contract-postal-unit.htm> (last visited Jan. 5, 2021).

³ In the Matter of Spanish Fort, Alabama 36527 / Appeal of Postal Service Determination to Close Spanish Fort Post Office, December 28, 2020 (Petition). See *also* Application for Suspension of the Determination of the Postal Service to Close the Spanish Fort Post Office, December 28,

implies that the Commission has jurisdiction pursuant to 39 U.S.C. § 404(d)(5) over the Postal Service's decision to close this contractor operated retail unit. As the Postal Service has consistently maintained in other dockets over the years, the scope of 39 U.S.C. § 404(d) is limited to the discontinuance of Postal Service-operated "Post Offices" and does not apply to contractor-operated retail facilities, which are not owned or operated by the Postal Service. The Commission's legal authority to receive appeals of the discontinuance of Post Offices does not include the Postal Service's administration of its contracts. An appeal of a contract matter like the CPO in Spanish Fort, Alabama falls outside the scope of 39 U.S.C. § 404(d)(5). Finally, as detailed below, the Commission recently declined to entertain appeals of the Postal Service's closing of contractor-operated retail units under circumstances similar to those in Spanish Fort, Alabama.⁴ The Postal Service, therefore, respectfully requests that the Commission dismiss the Petitioner's appeal.

FACTUAL BACKGROUND

Spanish Fort is a city in Baldwin County in the state of Alabama. On November 1, 1961, an Independent Rural Station was established in Spanish Fort as an extension of the Daphne Post Office.⁵ This unit, which operated on a contractual basis, was supplanted on January 1, 1980, by the contractor operated retail unit that is now in dispute. The CPO's address, originally

2020 (Application for Suspension of Determination) and Participant Statement, December 28, 2020 (Participant Statement).

⁴ See discussion of Docket Nos. A2017-2, *Rio Nido, CA*, A2012-88, *Alplaus, NY*, and A2015-2, *Careywood, ID*, *infra*.

⁵ U.S. Postal Bulletin, Vol. 81, Issue 20277, Oct. 26, 1961 at 3 (http://www.uspostalbulletins.com/PDF/Vol82_Issue20277_19611026.pdf).

designated as “general vicinity,” is now listed as 6450 US Highway 90, Spanish Fort, AL 36527. Under the Spanish Fort CPO’s contract with the Postal Service, the Spanish Fort CPO provides limited retail products and services, similar to those provided by a Post Office, and offers 927 Post Office Boxes to customers, 570 of which are currently in use.

In 2019, the Spanish Fort CPO’s previous supplier retired and terminated its contract with the Postal Service. At that time, the Postal Service awarded a six-month temporary (emergency) contract to the Spanish Fort CPO’s current supplier effective November 1, 2019. The Postal Service later extended this temporary contract an additional three months effective May 1, 2020, and an additional one month effective August 1, 2020, and an additional three and a half months effective September 1, 2020. The contract is currently set to expire on January 15, 2021.

Generally, when a previously established CPO is terminated, the Postal Service may award a short-term temporary (emergency) contract to a supplier to provide postal services in the community. This is usually an option of last resort for the Postal Service because of the high cost of such a contract. The basic term of a temporary (emergency) contract is up to six months, and the Postal Service generally does not allow extensions. In this case, however, the Postal Service granted multiple discretionary extensions of the temporary (emergency) contract to the Spanish Fort CPO’s current supplier. These multiple extensions were intended to delay temporarily the closure of the Spanish Fort CPO while the Postal Service attempted to secure a suitable replacement through a bid

solicitation process, or, in the alternative, determine its strategy for closing the Spanish Fort CPO. The Postal Service was not successful in securing a suitable replacement, either at the same location or elsewhere in the City of Spanish Fort.

A first solicitation for contractual bids was issued on November 3, 2020 and was closed on November 13, 2020; a second solicitation was issued on November 19, 2020 and was closed on December 5, 2020. In both instances, the Postal Service received a single bid; this bid was submitted each time by the CPO's current supplier; and its terms—though slightly altering from one solicitation to the next—fell outside the parameters of the Postal Service's acceptable compensation model. Given that the Spanish Fort CPO's current temporary (emergency) contract is set to expire on January 15, 2021, Postal Service officials decided to move the Post Office Boxes offered by the Spanish Fort CPO to the nearby Daphne Post Office, located at a driving distance of 4.8 miles from the Spanish Fort CPO.⁶

By written notice dated December 1, 2020, and placed in each active Post Office Box of the Spanish Fort CPO on December 1, 2020, the Postal Service informed customers that the Spanish Fort CPO would permanently close effective January 15, 2021.⁷ The notice explained that customers renting Post Office Boxes could elect to continue to receive mail through a Post Office Box at the Daphne Post Office. All customers renting Post Office Boxes at the Spanish Fort CPO will be refunded for the time remaining on their Post Office Boxes, and

⁶ Google Maps indicates that the Spanish Fort CPO is 4.8 miles from the Daphne Post Office. See *also* Participant Statement at Exhibit A.

⁷ Similar notices were also displayed at the Spanish Fort CPO.

those who elect to move their Post Office Boxes to the Daphne Post Office (an option currently available to all Post Office Box customers of the Spanish Fort CPO) will be required to use the Post Office Box address and ZIP Code of the Daphne Post Office. The Postal Service also advised all customers with Post Office Boxes to submit a Change of Address form to the Postal Service as soon as possible and that as a convenience, the Postal Service will forward mail from the customer's Post Office Box address to the customer's new delivery address for a period of 12 months. Moreover, all customers of the Spanish Fort CPO will continue to receive rural carrier service from the Postal Service. Rural Carriers offer normal carrier delivery services with the addition of the ability to sell stamps to the public.

In addition to receiving retail and Post Office Box services at the Daphne Post Office, customers of the Spanish Fort CPO may obtain retail services at the nearby Montrose and Mobile Post Offices (7 and 8.9 miles away, respectively),⁸ as well as through *usps.com*. Furthermore, customers of the Spanish Fort CPO can purchase stamps through *usps.com* and at multiple nearby businesses in the area; *usps.com* indicates there are 17 such businesses located within 10 miles of the 36527 ZIP Code.

ARGUMENT

The Commission's authority regarding Post Office closing appeals is prescribed by 39 U.S.C. § 404(d)(5) and is limited.⁹ Petitioner's appeal does not fall within the scope of the Commission's jurisdiction under 39 U.S.C. § 404(d)(5),

⁸ Google Maps indicates these distances, measured from the Spanish Fort CPO location.

⁹ 39 U.S.C. § 404(d).

because the appeal requests the Commission to review a contract administration decision concerning the operation of a contractor-operated retail facility (*i.e.*, a CPO). Section 404(d) does not apply to the Postal Service's management of its contracts, or to the operation of a retail facility whose existence derives solely from the terms and conditions of a voluntary contract.¹⁰ Accordingly, issues related to the administration of a services contract for the CPO, including whether the Postal Service should continue its contract for operation of that facility, do not fall within the Commission's 39 U.S.C. § 404(d)(5) jurisdiction.

Additionally, in numerous recent appeals of the Postal Service's decisions to terminate contracts governing the operation of contractor-operated facilities, the Commission applied its "sole source" test to determine that section 404(d) procedures were intended to apply to contractor-operated retail facilities only when they are the "sole source" of postal services to a community.¹¹ The Postal Service questions the Commission's "sole source" test to determine the applicability of section 404(d) procedures as a proper interpretation of section 404(d). That said, solely for purposes of argument, and without waiver of its prerogative to challenge the Commission's "sole source" test, the Postal Service submits that its application here further buttresses the Postal Service's position that section 404(d) procedures do not apply to its decision to terminate the CPO. Therefore, the Petitioner's appeal should be dismissed.

I. 39 U.S.C. § 404(d) Does Not Apply to Contract Post Offices.

¹⁰ *Id.*

¹¹ See discussion of Docket Nos. A2017-2, *Rio Nido*, A2012-88, *Alplaus* and A2015-2, *Careywood*, *infra*.

39 U.S.C. § 404(d)(5) provides that an appeal under that section must concern a “closing” of a “post office.”¹² Consistent with Handbook PO-101, *Postal Service-Operated Retail Facilities Discontinuance Guide*, a discontinuance occurs only from action directed toward a “Postal Service-operated retail facility.”¹³ CPOs are part of the Postal Service’s “Approved Postal Provider” network — retail outlets for postal products and services that include, inter alia, Community Post Offices, Village Post Offices, Approved Shippers, stamps on consignment locations, and Contract Postal Units.¹⁴ CPOs are located within existing communities in a variety of locations, including convenience stores, local businesses and libraries, and are operated by the management of those locations.¹⁵ The definition of “Postal Service-operated retail facility,” therefore, specifically excludes CPOs like that in Spanish Fort.¹⁶ Comparatively, the definition of “contractor-operated retail facility” specifically excludes any retail facility operated by a Postal Service employee.¹⁷ Thus, postal regulations are explicit in distinguishing between Postal Service-operated retail facilities and CPOs, and they eliminate any confusion regarding whether a

¹² *Id.*

¹³ Handbook PO-101 at Appendix A.

¹⁴ See Handbook PO-101, Appendix A – Glossary of Terms; Publication 156, Guide to Contract Postal Units for Postal Service Employees, January 2014; United States Postal Service, Contract Postal Units, <https://about.usps.com/suppliers/becoming/contract-postal-unit.htm> (last visited Jan. 5, 2021).

¹⁵ *Id.*

¹⁶ 39 C.F.R. § 241.3(a)(2)(i) (“‘USPS-operated retail facility’ . . . does not include any station, branch, community post office, or other retail facility operated by a contractor.”).

¹⁷ 39 C.F.R. § 241.3(a)(2)(ii) (“‘Contractor-operated retail facility’ includes any . . . community Post Office, or other facility, including a private business, offering retail postal services that is operated by a contractor, and does not include any USPS-operated retail facility.”).

contractor-operated retail facility, like that in Spanish Fort, is subject to 39 U.S.C. § 404(d).

Petitioner argues that “the Postal Service has failed to adhere to the applicable laws and regulations governing the discontinuance of post offices, in particular the requirements of 39 C.F.R. § 241.3.”¹⁸ As described above, however, the Postal Service was not subject to these procedures because its decision concerned the administration of a contract by which a third-party contractor offered retail services. For purposes of 39 U.S.C. § 404(d), a discontinuance is limited to the discontinuance of a “post office,” and that term is understood as a retail facility “operated or staffed by a postmaster or by another type of postal employee at the direction of the postmaster. . . .”¹⁹ The term “discontinuance” does not extend to operations at a CPO.²⁰ Thus, the Petitioner’s appeal in this matter does not concern the discontinuance of a Post Office subject to Title 39.

II. Postal Customers are Served by Nearby Post Offices and Alternate Methods of Access; thus, the Spanish Fort CPO is not the “Sole Source” of Retail Services for Spanish Fort.

In recent orders, the Commission found that it did not have jurisdiction to review a Postal Service decision to terminate a contract governing the operation of contractor-operated facilities because these contractor-operated facilities were not the sole source of postal services to the affected community. The Commission has consistently used its “sole source” test to determine its

¹⁸ Participant Statement at paragraph 3.

¹⁹ 39 C.F.R. § 241.1.

²⁰ See Handbook PO-101 Section 233.1.

jurisdiction to hear an appeal of a Postal Service decision to close or consolidate contractor-operated offices like CPOs or Community Post Offices (CPOs).²¹

Because the Spanish Fort CPO does not fall within the Commission's own stated "sole source" exception espoused in *Knob Fork* and its progeny, the Commission does not have jurisdiction to hear the Petitioner's appeal concerning this CPO.²²

Most recently, the Commission dismissed an appeal initiated by a group of petitioners requesting to apply 39 U.S.C. § 404(d) to the Postal Service's determination to terminate a contract governing the operation of the Rio Nido, California Community Post Office (Rio Nido CPO).²³ The Postal Service provided notice to customers of its decision to terminate the contract governing the operation of this contractor-operated retail facility, and the availability of service at the nearby Guerneville Post Office, located 2.1 miles from the Rio Nido CPO. In this matter, the Commission specifically distinguished between a traditional Post Office and a non-Postal Service-operated contract office like the Rio Nido CPO, and noted that "the Commission, through over 30 years of precedent, has established that the Postal Service's decision to close or consolidate a CPO is only within the Commission's jurisdiction if the CPO is the sole source of postal services to the affected community."²⁴ Based in part on the facts that customers of the Rio Nido CPO would be served by the Guerneville Post Office, the Postal

²¹ See discussion of Docket Nos. A2017-2, *Rio Nido*, A2012-88, *Alplaus*, and A2015-2, *Careywood*, *infra*. As noted above, the Postal Service applies the Commission's "sole source" test solely for purposes of argument, and without waiver of its prerogative to challenge this test or its application in future proceedings before the Commission or in other fora.

²² Commission Order Remanding Determination for Further Consideration, Docket No. A83-80, *Knob Fork*, WV (January 18, 1984) (*Knob Fork*).

²³ PRC Order No. 4088, Order Affirming Determination, PRC Docket No. A2017-2 (September 1, 2017) (*Rio Nido*).

²⁴ *Id.* at 8.

Service committed to relocate the Post Office Boxes located at the Rio Nido facility to the Guerneville Post Office, and Rio Nido customers' access to the limited postal services provided by usps.com, or alternative stamp purchasing options such as grocery stores, the Commission concluded that the Rio Nido CPO is not the sole source of postal services to the Rio Nido community.²⁵ The Commission, therefore, determined that it lacked jurisdiction to hear the appeal of the closing of the Rio Nido CPO, and let stand the Postal Service's decision to close the Rio Nido CPO.²⁶

Similarly, the Commission granted the Postal Service's motion to dismiss an appeal of the Postal Service's decision to close the Careywood, Idaho Community Post Office (Careywood CPO).²⁷ Like the Rio Nido CPO and the Spanish Fort CPO, the Careywood, Idaho CPO was also not a Postal Service-operated retail facility.²⁸ The Postal Service made a determination not to renew a contract with a third-party contractor for operation of the Careywood CPO, and informed customers of this decision, noting that Post Office Box service would be relocated to the Athol, Idaho Post Office, located 7 miles away from Careywood.²⁹

In its decision in *Careywood*, the Commission noted that "while approved shippers, contract units such as village post offices, and automated postal centers may not be currently available to many postal customers, other

²⁵ *Id.* at 10-11.

²⁶ *Id.* at 12.

²⁷ PRC Order No. 2505, Order Dismissing Appeal, PRC Docket No. A2015-2 (May 27, 2015), at 15 (*Careywood*).

²⁸ *Id.* at 2-3.

²⁹ *Id.* at 3-4.

categories, such as another postal retail facility approximately a 7 minute drive away, rural carriers, www.usps.com, and the Internet, are available.”³⁰ The Commission further noted that although these alternatives may not be as convenient as the Careywood CPO, “the Commission’s review focuses on whether the Careywood CPO is the sole source of postal services to the community, not whether it is the most convenient or desirable source of postal services.”³¹ The Commission concluded, therefore, that the Careywood CPO was not the sole source of postal services to the community of Careywood and that there was no basis to remand the matter to require the Postal Service to follow the 404(d) closing procedures.³²

Moreover, the Commission dismissed an appeal in which a postal customer petitioned the Commission to apply section 404(d) to a decision to terminate a contract governing the operation of the Alplaus, NY Community Post Office (Alplaus CPO).³³ Like the Careywood, Idaho CPO, the Rio Nido CPO, and the Spanish Fort CPO, the Alplaus CPO was also not a Postal Service-operated retail facility.³⁴ The Postal Service provided notice to customers of its decision to terminate the contract governing the operation of the Alplaus CPO, a contractor-operated retail facility, and the availability of service at a nearby Post Office, Rexford Post Office, which was located approximately one mile away.³⁵

Because postal customers of the Alplaus CPO were served by the nearby

³⁰ *Id.* at 12.

³¹ *Id.* at 12-13.

³² *Id.* at 13.

³³ PRC Order No. 1293, Order Dismissing Appeal, PRC Docket No. A2012-88 (March 21, 2012) (*Alplaus*).

³⁴ *Id.* at 2.

³⁵ *Id.* at 6.

Rexford Post Office and had numerous other retail service options available to them, the Commission determined that section 404(d) did not apply under the *Knob Fork* “sole source” standard.³⁶

Akin to the facts in the *Rio Nido*, *Careywood*, and *Alplaus* cases, customers of the Spanish Fort CPO will also still be served by a nearby Post Office. Customers of the Spanish Fort CPO will be served by the Daphne Post Office, which is located 4.8 miles from the Spanish Fort CPO. This is closer than the availability of the nearest post office in the *Careywood* case (about 7 miles). Additionally, the Postal Service will relocate Post Office Box service from the Spanish Fort CPO to the Daphne Post Office, as in the *Rio Nido* and *Careywood* cases. Moreover, customers of the Spanish Fort CPO will remain eligible for rural carrier service and will have access to the postal services provided by usps.com and alternative stamp purchasing options offered by many retail businesses in the area.³⁷ Based on these facts, the Commission should also determine in this case that section 404(d) does not apply to the Postal Service’s decision to close the Spanish Fort CPO under the Commission’s *Knob Fork* “sole source” standard.³⁸

³⁶ *Id.*; see *Knob Fork*, *supra*.

³⁷ This illustrates the Postal Service’s continuing commitment to provide postal services through more than traditional “brick and mortar,” USPS-operated retail facilities. Since the time of the *Knob Fork* decision, the Postal Service has made considerable strides in providing increased access to retail postal services through a myriad of methods, including traditional Post Offices, contract postal units, rural and highway carriers, Village Post Offices, Self-Service Kiosks, Approved Shippers, usps.com, and consignment stamp retailers. The Commission and Commissioners have taken note of these newer avenues of postal access in past dockets. See *Careywood*, *supra*. See also *Alplaus*, *supra* (concurring opinion of Commissioner Taub).

³⁸ See *Knob Fork*, *supra*.

III. Strong Policy Reasons Support the Postal Service's Position that the Commission Lacks Jurisdiction to Consider the Appeal of a Contract Administration Decision for a Contract with a Third-Party CPO Operator.

The procedures imposed by 39 U.S.C. § 404(d) are not compatible with the requirements of contract management, negotiation, and implementation.³⁹ The Postal Service's ability to negotiate reasonable contractual terms for the operation of a contract unit, or to require satisfactory contract performance, would be harmed if parties had the option of appealing contractual decisions. A third party, the Commission, would essentially become a party to contract negotiations, injecting more complexity into the contract negotiation process. In many situations, applying the section 404(d) procedures to CPO contract decisions would provide contractors with a bargaining advantage over the Postal Service, and force the agency to continue operating a contract, or enter a new contract, even where sound business judgment would clearly suggest otherwise. This imbalance in bargaining power would arise most acutely where a CPO operator is the only person in the community capable of operating the CPO. Because the participation of the CPO operator would be necessary to perform the analysis required by section 404, a CPO operator could prevent the Postal Service from satisfying section 404 by refusing to cooperate, or it could extort premium compensation from the Postal Service in exchange for cooperation.

³⁹ See 76 Fed. Reg. 41416-41417, Section I (July 14, 2011).

Indeed, the facts of the present case exemplify these risks; for as explained above, both of the Postal Service's solicitation proposals garnered a single bid, each one from the current operator, proposing contractual terms outside of the Postal Service's acceptable compensation model (as well as reasonable business judgement).

CONCLUSION

For the reasons discussed, the Postal Service respectfully requests that the Commission dismiss the City of Spanish Fort's appeal of the Postal Service's determination to close the Spanish Fort CPO.

Respectfully submitted,

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